

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARLOS ALBERT JAQUINET,

Defendant.

CR 18-137-BLG-SPW

**ORDER DENYING
DEFENDANT’S REQUEST
TO APPEAR BY VIDEO
CONFERENCING**

Presently before the Court is Defendant Carlos Alberto Jaquinet’s request that he be allowed to appear at the change of plea hearing currently scheduled for March 19, 2019, at 9:30 a.m. by videoconferencing.

Under Federal Rule of Criminal Procedure 43(a), the defendant must be present at the plea unless Rule 43, Rule 5, or Rule 10 provide otherwise. The Advisory Committee Note to the 1974 amendments to Rule 43 explains that the inclusion of “plea” in Rule 43(a) was “added to subdivision (a) to make perfectly clear that defendant must be present at the time of the plea.” Additionally, Rule 11(b)(1) specifically requires that “[b]efore the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court” Rule 11(b)(2) also requires that “before accepting a plea of guilty or nolo contendere, the court must address

the defendant personally in open court” *See also, Valenzuela-Gonzalez v. United States Dist. Court for Dist. Of Ariz.*, 915 F.2d 1276, 1281 (9th Cir. 1990) (finding “rule 43 requires that the defendant be present at all stages of trial, the plea and sentencing . . . Absent a determination by Congress that closed circuit television may satisfy the presence requirement of the rules, we are not free to ignore the clear instructions of Rules 10 and 43.”); *United States v. Klos*, 2013 WL 2237543 (D. Ariz. May 20, 2013.)

Accordingly, because there is no federal procedural rule or other authority authorizing the taking of a felony guilty plea by videoconference, and the procedural rules require a defendant’s physical presence to plead guilty to a felony,

IT IS HEREBY ORDERED that Defendant’s motion to appear by videoconferencing is **DENIED**.

DATED this 15th day of March, 2019.



TIMOTHY J. CAVAN
United States Magistrate Judge